

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA )  
                            )  
                            )  
      v.                    )        CRIMINAL NO. 05-24 ERIE  
                            )  
BARRY WAYNE LEWIS        )

CHANGE OF PLEA

Proceedings held before the HONORABLE  
SEAN J. McLAUGHLIN, U.S. District Judge,  
in Courtroom C, U.S. Courthouse, Erie,  
Pennsylvania, on Friday, March 23, 2007.

APPEARANCES:

CHRISTINE A. SANNER, Assistant United States  
Attorney, appearing on behalf of the Government.

THOMAS W. PATTON, Assistant Federal Public  
Defender, appearing on behalf of the Defendant.

Ronald J. Bench, RMR - Official Court Reporter

1 | PROCEEDINGS

2

(Whereupon, the proceedings began at 1:30 p.m., on Friday, March 23, 2007, in Courtroom C.)

5

6 THE COURT: Mr. Lewis, I'm informed that you wish to  
7 change the plea that you previously entered at Count One of  
8 Indictment No. 05-24 Erie to a plea of guilty, is that correct?

9 THE DEFENDANT: Yes, sir. I just want to get this  
10 over with.

11                   THE COURT: All right. Well, we'll go though it,  
12 then, just listen to my questions, let me go right into my  
13 colloquy. Before accepting your guilty plea, there are a  
14 number of questions that I will ask you to make certain that it  
15 is a valid plea. If you do not understand any question I ask  
16 you, please tell me, I will explain it to you and I will give  
17 you an opportunity to consult with Mr. Patton. I give you  
18 these instructions because it is essential to a valid plea that  
19 you understand every question before you answer. Would you  
20 please administer the oath.

21 DEPUTY CLERK: Could you please raise your right  
22 hand.

23 (Whereupon, the Defendant, BARRY WAYNE LEWIS, was  
24 sworn.)

THE COURT: Do you understand that now that you have

1 been sworn, your answers to my questions are subject to the  
2 penalties of perjury or of making a false statement if you do  
3 not answer truthfully?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Would you please tell me your full name?

6 THE DEFENDANT: My full name is Barry Wayne Lewis.

7 THE COURT: How old are you?

8 THE DEFENDANT: I'm 48.

9 THE COURT: How far did you in school?

10 THE DEFENDANT: 10th grade, sir.

11 THE COURT: Can you communicate in English?

12 THE DEFENDANT: What do you mean communicate in  
13 English?

14 THE COURT: Well, do you understand English?

15 THE DEFENDANT: Oh, yeah.

16 THE COURT: And you can speak it?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Has that been your experience, Mr.  
19 Patton?

20 MR. PATTON: Yes, sir.

21 THE COURT: Have you taken any drugs or medication  
22 or have you drunk any alcoholic beverages in the past 24 hours?

23 THE DEFENDANT: Just my psyche meds, sir.

24 THE COURT: What are you taking?

25 THE DEFENDANT: I take Wellbutrin and I take

1 Seroquel for hearing voices and stuff like that.

2 THE COURT: All right. Do those medications that  
3 you're taking in any way make your thinking so cloudy that you  
4 don't understand what's going on or do you understand what's  
5 going on?

6 THE DEFENDANT: I understand fully, sir.

7 THE COURT: Are you now or have you recently been  
8 hospitalized or treated for a narcotic addiction?

9 THE DEFENDANT: No, sir, I'm drug free.

10 THE COURT: Okay. You do understand what is  
11 happening here today, is that right?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Does either counsel have any doubt about  
14 the competence of Mr. Lewis to plead guilty at this time to the  
15 charge contained in the Indictment; Ms. Sanner?

16 MS. SANNER: No, your Honor.

17 THE COURT: Mr. Patton?

18 MR. PATTON: No, sir.

19 THE COURT: I find that the defendant is competent.  
20 Do you have a lawyer with you?

21 THE DEFENDANT: Yes, Tom W. Patton, right here.

22 THE COURT: Have you had a sufficient opportunity to  
23 discuss your case with him?

24 THE DEFENDANT: Yes, sir, we discussed it.

25 THE COURT: And are you satisfied with the work that

1 Mr. Patton has done for you?

2 THE DEFENDANT: He worked real hard for me, sir.

3 THE COURT: Yes, he did. And are you satisfied with  
4 the work that he's done for you?

5 THE DEFENDANT: Yes, sir, I am.

6 THE COURT: All right. Do you understand that if  
7 you continue to plead not guilty and do not change your plea,  
8 you would have the right to be assisted by an attorney at the  
9 trial of the charge against you?

10 THE DEFENDANT: Could you run that back to me again.

11 THE COURT: Yes. Do you understand that if you  
12 continue to plead not guilty and do not change your plea, you  
13 would have the right to be assisted by an attorney at the trial  
14 of the charge against you?

15 THE DEFENDANT: Yes, sir, I understand that.

16 THE COURT: And do you understand that if you did  
17 not enter a guilty plea and that if you qualified financially,  
18 you would be entitled to be assisted by an attorney at no cost  
19 to you at every phase of the processing of the charge, do you  
20 understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand that if you did not  
23 plead guilty and that if there were a trial, under the  
24 Constitution and laws of the United States, you would be  
25 entitled to a speedy trial by a judge and jury on the charge,

1 do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Do you understand that if there were a  
4 trial, you would be presumed to be innocent at the trial of the  
5 charge against you?

6 THE DEFENDANT: Yes, sir, I understand that.

7 THE COURT: Do you understand that if there were a  
8 trial, the government would be required to prove your guilt by  
9 competent evidence and beyond a reasonable doubt before you  
10 could found to be guilty?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand that if there were a  
13 trial, you would not have to prove that you were innocent, do  
14 you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand that if there were a  
17 trial, the jury would have to be unanimous in order to find you  
18 guilty of the charge?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that if there were a  
21 trial, you would have the right to participate in the selection  
22 of the jury; that you would have the right to strike or  
23 eliminate any prospective juror if it was demonstrated that the  
24 juror would be unable to render a fair and impartial verdict;  
25 and that you would the right to strike or eliminate ten jurors

1 from the jury and one alternate juror without giving any reason  
2 at all for so doing?

3 THE DEFENDANT: Yes, your Honor, I understand.

4 THE COURT: Do you understand that if there were a  
5 trial, the witnesses for the government would have to come to  
6 court and they would have to testify in your presence?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand that if there were a  
9 trial, your counsel could cross-examine the witnesses for the  
10 government, object to evidence offered by the government and  
11 then offer evidence on your behalf?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand that if there were a  
14 trial, the government would have to pay witness fees to  
15 witnesses which you wished to call on your behalf if you  
16 qualified as being financially unable to pay the fees?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand that if there were a  
19 trial, you would have the right to testify if you chose to?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you understand that if there were a  
22 trial, you would have the right not to testify and that no  
23 inference or suggestion of guilt could be drawn from the fact  
24 that you did not testify?

25 THE DEFENDANT: Yes, your Honor, I understand.

1                   THE COURT: If you plead guilty and I accept your  
2 plea, do you understand that you will waive your right to a  
3 trial and the other rights I mentioned to you, that there will  
4 be no trial, and that I will enter a judgment of guilt and  
5 sentence you on the basis of your guilty plea after considering  
6 a presentence report?

7                   THE DEFENDANT: Yes, your Honor.

8                   THE COURT: If you plead guilty, do you understand  
9 that you will also have to waive your right not to incriminate  
10 yourself, because I'm going to ask you questions about what you  
11 did in order to satisfy myself that you are guilty as charged  
12 and that you will have to acknowledge your guilt?

13                  THE DEFENDANT: Yes, sir, I understand.

14                  THE COURT: Now that I have mentioned all your  
15 rights to you, do you still wish to plead guilty?

16                  THE DEFENDANT: Yes, your Honor.

17                  THE COURT: Have you received a copy of the  
18 Indictment naming you, and have you discussed with your counsel  
19 the charge in the Indictment to which you intend to plead  
20 guilty?

21                  THE DEFENDANT: Yes, I sure did.

22                  THE COURT: Do you understand that you are charged  
23 in Count One as follows: "On or about March 28, 2005, in  
24 Warren County, in the Western District of Pennsylvania, the  
25 defendant, Barry Wayne Lewis, after having been convicted on or

1 about July 2, 1982, at Docket No. CR169043, in the Court of  
2 Common Pleas, County of Cuyahoga, Criminal Division, State of  
3 Ohio, of the crime of abduction, which is a crime punishable by  
4 imprisonment for a term exceeding one year, and having been  
5 convicted on or about March 14, 1991, at Docket No. CR255224,  
6 in the Court of Common Pleas, County of Cuyahoga, State of  
7 Ohio, of the crime of burglary, which is a crime punishable by  
8 imprisonment for a term exceeding one year, and having been  
9 convicted on or about August 7, 1995, in the Superior Court,  
10 County of San Diego, Criminal Division, State of California, of  
11 the crime of assault with a deadly weapon, which is a crime  
12 punishable by imprisonment for a term exceeding one year, did  
13 knowingly possess in and affecting interstate commerce, a  
14 firearm as defined in Title 18, United States Code, Section  
15 921(a)(3); specifically, a Marlin, .30-30 caliber lever action  
16 rifle, Model 336.

17                 In violation of Title 18, United States Code,  
18 Sections 922(g)(1) and 924(e)." Do you understand the charge?

19                 THE DEFENDANT: Yes, sir, I understand.

20                 THE COURT: Do you understand that in order for the  
21 crime of possession of a firearm by a convicted felon, in  
22 violation of Title 18, United States Code, Sections 922(g)(1)  
23 and 924(e), to be established, the government must prove all of  
24 the following essential elements beyond a reasonable doubt:

25                 One. The defendant was convicted of a crime

1 punishable by imprisonment for a term exceeding one year.

2 Two. The defendant thereafter possessed a firearm.

3 Three. Said firearm was possessed in or affecting  
4 interstate commerce.

5 Do you understand the elements of this crime?

6 THE DEFENDANT: Yes, sir, I do.

7 THE COURT: Do you understand that the maximum  
8 punishment is a term of imprisonment of not more than 10 years.  
9 However, if it is determined that the defendant has three  
10 previous convictions for a violent felony or a serious drug  
11 offense, or both, then pursuant to 18 U.S.C. Section 924(e),  
12 the term of imprisonment is not less than 15 years to a maximum  
13 of life imprisonment.

14 A fine of not more than \$250,000.

15 A term of supervised release of three years; or five  
16 years if 18 U.S.C. 924(e) applies.

17 As well as a mandatory special assessment of \$100.

18 Do you understand the maximum penalties for a  
19 violation of Count One?

20 THE DEFENDANT: Yes, sir. Your Honor, I'm sorry.  
21 I said yes, your Honor.

22 THE COURT: That's fine. Now, has anybody made any  
23 threat to you or to anyone else that has forced you in any way  
24 to plead guilty today?

25 THE DEFENDANT: No, your Honor.

1                   THE COURT: Has there been a plea agreement in this  
2 case?

3                   MS. SANNER: Yes, your Honor.

4                   THE COURT: What are its material terms?

5                   MS. SANNER: The plea agreement is dated December  
6 30, 2005. And it sets forth the full and complete agreement  
7 between the parties.

8                   Pursuant to the plea agreement, the defendant will  
9 be sentenced under the Sentencing Reform Act. The facts  
10 relevant to sentencing will be determined initially by the  
11 United States Probation Office and finally by the United States  
12 Court by a preponderance of the evidence.

13                  Pursuant to the plea agreement, the defendant will  
14 enter a plea of guilty to Count One of the Indictment. He will  
15 deposit a special assessment of \$100.

16                  And he waives the right to take a direct appeal  
17 subject to the following exceptions. First, if the United  
18 States appeals from the sentence, the defendant may take a  
19 direct appeal from the sentence. Second, if the sentence  
20 exceeds the applicable statutory limits or the sentence  
21 unreasonably exceeds the guideline range determined by the  
22 court, the defendant may take a direct appeal of his sentence.

23                  And finally a condition of his guilty plea, the  
24 defendant may take a direct appeal from his conviction limited  
25 to the following issue. Whether the district court erred in

1       denying Lewis's motion to suppress evidence.

2                  The defendant further waives his right to file a  
3 motion to vacate sentence under 28 U.S.C. Section 2255.

4                  The United States Attorney retains the right of  
5 allocution at the time of sentencing.

6                  The United States Attorney will move that pursuant  
7 to the Sentencing Guidelines, the court reduce the offense  
8 level by three levels for acceptance of responsibility.

9                  And the United States Attorney will take any  
10 position she deems appropriate in the course of any appeals or  
11 in response to any post-sentence motions.

12                 The parties agree that the maximum penalty is a term  
13 of imprisonment of not more than 10 years. However, if the  
14 defendant has three previous convictions for a violent felony  
15 or a serious drug offense, or both, then there is a minimum  
16 term of 15 years to a maximum of life imprisonment. In  
17 addition, there is a fine of not more than \$250,000. A term of  
18 supervised release of three years, or five years if 924(e)  
19 applies. A special assessment of \$100.

20                 The letter sets forth the full and complete  
21 agreement between the parties, there are no other agreements,  
22 promises, terms or conditions, express or implied.

23                 The agreement was signed by the defendant today,  
24 March 23, 2007. And the government offers Exhibit 1.

25                 THE COURT: All right. Mr. Patton, by virtue of the

1 terms of the plea agreement, did the defendant waive his right  
2 to challenge the court's ruling on the motion to dismiss on the  
3 basis of speedy trial?

4 MR. PATTON: Yes, the government said if we insisted  
5 on trying to have a plea agreement include that provision, that  
6 instead of recommending the three levels for acceptance of  
7 responsibility, they would only recommend the two levels for  
8 acceptance of responsibility. And since that was going to be  
9 their position on this, even though the suppression hearing  
10 took place in October of 2005, the government's position is  
11 based on the office's now position that if you litigate a  
12 motion to suppress, you don't get the third point. And if a  
13 new plea agreement was negotiated to include that Mr. Lewis be  
14 able to appeal the speedy trial issue, that they would then  
15 take the position that they would not give the third point for  
16 acceptance of responsibility.

17 THE COURT: All right. Mr. Lewis, did you have an  
18 opportunity to read and review that plea agreement before you  
19 came to court today?

20 THE DEFENDANT: Yes, me and my lawyer went over it  
21 there, your Honor.

22 THE COURT: You and your lawyer discussed it, is  
23 that right?

24 THE DEFENDANT: Yes.

25 THE COURT: And having reviewed it with Mr. Patton,

1 do you understand it?

2 THE DEFENDANT: Yes, I understand.

3 THE COURT: Do you agree with it?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Did you sign it?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand that by signing it,  
8 you were attesting, by virtue of your signature, to the fact  
9 that you agree with its terms and conditions?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Has it been identified?

12 MS. SANNER: Yes, it has been offered into evidence,  
13 your Honor.

14 THE COURT: If I didn't already say it, it's  
15 admitted. Has anybody made any promise, other than the plea  
16 agreement, that has caused you to plead guilty today?

17 THE DEFENDANT: No, your Honor.

18 THE COURT: And do you understand that I'm not  
19 required to accept the plea agreement that you've entered into  
20 and may reject it. But if I do reject the plea agreement, you  
21 would be advised in open court and you would have the  
22 opportunity to withdraw your guilty plea. If the plea  
23 agreement is rejected, you may nevertheless continue your plea  
24 of guilty, and if you persist in your guilty plea after the  
25 plea agreement is rejected, your sentence, or the disposition

1 of this case, may be less favorable to you than that proposed  
2 in the plea agreement; do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Do you understand that the offense to  
5 which you are pleading guilty is a felony offense, that if your  
6 plea is accepted, you will be adjudged guilty of that offense  
7 and that such adjudication may deprive you of valuable civil  
8 rights, such as the right to vote, hold public office, serve on  
9 a jury, and the right to possess any type of firearm; do you  
10 understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Under the Sentencing Reform Act of  
13 1984 -- Mr. Lewis, I'm going to let you sit down, why don't you  
14 take a sit, we'll finish this from counsel table. Under the  
15 Sentencing Reform Act of 1984, the United States Sentencing  
16 Commission has issued guidelines for judges to follow in  
17 determining sentences in criminal cases for offenses occurring  
18 after November 1, 1987. Have you and Mr. Patton talked about  
19 how the guidelines might apply to your case and the fact that  
20 the guidelines are now advisory?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand that I'm not going to  
23 be able to determine the advisory guideline sentence for your  
24 case until after the presentence report has been completed and  
25 you and the government have had an opportunity to challenge the

1 facts reported by the probation officer?

2 THE DEFENDANT: Yes, your Honor, I understand that.

3 THE COURT: All right. Do you understand that after  
4 it has been determined what guideline sentence applies to a  
5 case, the judge has the authority in some circumstances to  
6 impose a sentence that is more severe or less severe than that  
7 called for by the Sentencing Guidelines?

8 THE DEFENDANT: Yes, your Honor, I understand.

9 THE COURT: Do you understand that under certain  
10 circumstances you or the government may have the right to  
11 appeal any sentence that the court imposes?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: But, specifically, I want to ask you now  
14 by virtue of the plea agreement, you understand that your right  
15 to appeal has been limited by virtue of the terms of the plea  
16 agreement and consistent with the description that was just  
17 given by the U.S. Attorney, do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: All right. And do you understand that  
20 parole has been abolished, and that if you are sentenced to a  
21 term of imprisonment, you will not be released on parole?

22 THE DEFENDANT: Well, I got a little question there,  
23 I don't understand that one.

24 MR. PATTON: May I have a moment, your Honor.

25 THE COURT: Do you want to ask Mr. Patton first.

(Discussion held off the record between the  
Defendant and Defense Counsel.)

3 THE DEFENDANT: I understand, your Honor.

4 THE COURT: All right, let me ask the question again  
5 just so it's clear. Do you understand that parole has been  
6 abolished -- you know what parole is, don't you?

7 THE DEFENDANT: Yes, your Honor.

8                   THE COURT: And that if you are sentenced to a term  
9 of imprisonment, you will not released on parole, do you  
10 understand that?

11 THE DEFENDANT: Yes, I understand.

12 THE COURT: Do you understand that if the sentence  
13 turns out to be more severe than you expected it to be, you  
14 would still be bound by your guilty plea and you would have no  
15 right to withdraw it?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Except for your discussions with Mr.  
18 Patton about Sentencing Guidelines, has anybody made any  
19 prediction or promise to you about what your sentence will be?

20 THE DEFENDANT: No.

THE COURT: Has anything that I've said here today suggested to you what your actual sentence will be?

23 THE DEFENDANT: No, sir.

THE COURT: Have you been instructed by your  
counsel, by government counsel, or by anybody else to respond

1 untruthfully to any question about a promised sentence?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: All right. Mr. Lewis, did you, as  
4 charged in the Indictment and as previously read to you be me,  
5 commit the offense as charged?

6 THE DEFENDANT: Yes, I did, I would like to explain  
7 myself later on if I can, though.

8 MR. PATTON: One moment, your Honor.

9 (Discussion held off the record between the  
10 Defendant and Defense Counsel.)

11 THE DEFENDANT: Yes, your Honor, I understand.

12 THE COURT: Okay. I just read you what the charge  
13 in Indictment was, that is possession of a firearm by a felon,  
14 you heard me read the details of that. Did you commit the  
15 offense as laid out by the government in the Indictment?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Okay. Now, was there something else you  
18 wanted to tell me?

19 THE DEFENDANT: Well, your Honor, I just wanted to  
20 tell you how I was thinking that night when I possessed this  
21 firearm.

22 (Discussion held off the record between the  
23 Defendant and Defense Counsel.)

24 THE COURT: Those sound like sentencing issues to  
25 me?

1                   MR. PATTON: Exactly. I was talking with Mr. Lewis,  
2 to the extent he wants to do any explaining as to what  
3 happened --

4                   THE COURT: He'll have the opportunity to do that at  
5 sentencing.

6                   MR. PATTON: Correct, your Honor. I've explained  
7 that to Mr. Lewis.

8                   THE COURT: All right.

9                   THE DEFENDANT: Okay.

10                  THE COURT: Now, Ms. Sanner, what would be the  
11 government's evidence if this case proceeded to trial?

12                  MS. SANNER: Your Honor, if the case proceeded to  
13 trial, the government would present evidence and testimony that  
14 on March 28, 2005, at approximately 10 in the evening in Warren  
15 County, Pennsylvania, Deputy Sheriff Keith Sorensen was on duty  
16 at the corner of Hickory Street and Fourth Avenue. He observed  
17 two males, one of whom was the defendant, Barry Wayne Lewis.  
18 Lewis appeared to be carrying and attempting to conceal from  
19 the officer a rifle that was wrapped in a blanket and which  
20 protruded from a garbage bag.

21                  Warren City police officer Brian Gulnac arrived.  
22 Deputy Sorensen then approached the defendant and asked what he  
23 was carrying. The defendant advised the deputy that the object  
24 was a rifle. Lewis identified himself and a criminal check was  
25 performed, resulting in an extraditable warrant for the

1 defendant from California.

2                   The defendant was transported to the Warren station  
3 of the Pennsylvania State Police, where he waived his rights  
4 under Miranda and made a statement admitting to possessing the  
5 firearm.

6                   The firearm was a Marlin .30-30 caliber lever action  
7 rifle, model 336. The firearm was possessed in or affecting  
8 interstate commerce.

9                   Lewis is a multi-state offender with prior felony  
10 convictions; including a July 2, 1982 conviction in the Court  
11 of Common Pleas, County of Cuyahoga, Criminal Division, State  
12 of Ohio, of the crime of abduction. A March 14, 1991  
13 conviction, in the Court of Common Pleas, County of Cuyahoga,  
14 State of Ohio, for the crime of burglary. And an August 7,  
15 1995 conviction, in the Superior Court, County of San Diego,  
16 Criminal Division, State of California, of the crime of assault  
17 with a deadly weapon. All of these crimes are punishable by  
18 imprisonment for a term exceeding one year. That would  
19 summarize the government's testimony and evidence at trial.

20                  THE COURT: All right. Mr. Lewis, you just heard  
21 what Ms. Sanner said, do you agree with everything she just  
22 said?

23                  MR. PATTON: Your Honor, Ms. Sanner indicated that  
24 Mr. Lewis tried to hide the object from the deputy sheriff, I  
25 don't know if you recall from the suppression hearing, the

1 testimony was the deputy sheriff pulled up to a stoplight and  
2 Mr. Lewis and his cousin walked in front of the vehicle. It is  
3 our position that Mr. Lewis was not trying to hide this object.

4 THE COURT: All right, that's noted, I think that  
5 was probably the position at the suppression hearing as well.  
6 But it's not an element of the offense anyways?

7 MR. PATTON: That's correct.

8 THE COURT: But aside from that, do you agree with  
9 everything that she said?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Okay. Mr. Lewis, do you still wish to  
12 plead guilty?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Mr. Patton, is it your advice that he do  
15 so?

16 MR. PATTON: Yes, sir.

17 THE COURT: Because you knowledge that you are in  
18 fact guilty as charged in Count One, because you know about  
19 your right to a trial, because you are voluntarily pleading  
20 guilty, I will accept your guilty plea and enter a judgment of  
21 guilty on your plea to Count One of Indictment No. 05-24 Erie.

22 It is therefore the finding of the court in the case  
23 of United States v. Barry Wayne Lewis that this defendant is  
24 fully competent and capable of entering an informed plea, and  
25 that his plea of guilty is a knowing and voluntary plea

1 supported by an independent basis in fact containing each of  
2 the essential elements thereof and therefore the plea is  
3 accepted and the defendant is now adjudged guilty of the  
4 charge.

5           Would you please have Mr. Lewis and his counsel  
6 execute the change of plea.

7           (Whereupon, the Change of Plea was executed by the  
8 Defendant and Defense Counsel.)

9           MR. PATTON: Your Honor, I believe it is apparent  
10 from this proceeding, but I just want to indicate that we are  
11 in no way, shape or form agreeing that Section 924(e) applies.  
12 We're not agreeing that Mr. Lewis is an armed career criminal.  
13 That's why the statutory maximums were laid out in the  
14 alternative. The statutory maximum is 10 years unless Mr.  
15 Lewis has three priors.

16           THE COURT: You're not agreeing to the predicates  
17 that would make him a career criminal?

18           MR. PATTON: Correct.

19           THE COURT: The record is clear on that.

20           Now, Mr. Lewis, a presentence report is going to be  
21 prepared by the United States probation officer. And it will  
22 be in your best interests to cooperate with him in furnishing  
23 information for the report, because that report will be  
24 important in my decision as to what your sentence will be. You  
25 and your counsel will have the right and you'll have the

1 opportunity to examine that report before the sentencing.

2 The disposition of sentencing in this case is set  
3 for July 9, 2007 at 10 a.m. All right, we're adjourned.

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5 (Whereupon, at 1:54 p.m., the Change of Plea  
6 proceedings were concluded.)

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1                   C E R T I F I C A T E  
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5                   I, Ronald J. Bench, certify that the foregoing is a  
6 correct transcript from the record of proceedings in the  
7 above-entitled matter.

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13 Ronald J. Bench

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